

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH BARTELLI,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 3:CV-04-0910
	:	(JUDGE KOSIK)
C/O NAGY and	:	
DONALD JONES,	:	
	:	
Defendants.	:	

MEMORANDUM AND ORDER

AND NOW, THIS 27th DAY OF SEPTEMBER, 2005, IT APPEARING TO THE COURT THAT:

[1] On April 26, 2004, plaintiff filed the above-captioned action pursuant to 42 U.S.C. § 1983;

[2] the matter was assigned to United States Magistrate Judge Thomas M. Blewitt;

[3] Bartelli's complaint concerns the defendants' actions while the plaintiff was incarcerated at the State Correctional Institution at Dallas (SCI Dallas), Pennsylvania;

[4] Bartelli alleges that defendant Nagy filed a false misconduct report against the plaintiff on April 24, 2001, after the plaintiff had filed a grievance against Nagy;

[5] Bartelli further alleges that Hearing Examiner Donald Jones denied the his requests to call witnesses at a disciplinary hearing held on April 26, 2001¹;

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The plaintiff has filed over a dozen 42 U.S.C. § 1983 actions asserting claims of retaliation against guards and officials at SCI-Dallas. On July 26,

[6] on October 29, 2004 this court declined to adopt a Report and Recommendation of the Magistrate Judge that suggested that we dismiss Bartelli's complaint as time-barred and because the plaintiff failed to assert a cognizable claim of retaliation against the defendants;

[7] the defendants filed a motion for summary judgment or for judgment on the pleadings on May 25, 2005;

[8] both parties briefed the motion for summary judgment;

[9] Magistrate Judge Blewitt issued a Report and Recommendation on September 6, 2005, suggesting that we grant the defendant's motion and dismiss both of Bartelli's claims;

[10] neither the plaintiff, nor the defendant filed objections to the Report and Recommendation.

IT FURTHER APPEARING THAT:

[11] If no objections are filed to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of the plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct. 466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3rd Cir. 1987);

2005, we adopted a Report and Recommendation issued by Magistrate Judge Blewitt dismissing another 42 U.S.C. § 1983 retaliation action filed by Bartelli. We dismissed the case pursuant to 28 U.S.C. § 1915(g), also known as the "three strikes" rule, as Bartelli had filed three prior civil rights actions in this court that warranted dismissal for failure to state a claim. *See Bartelli v. Beard, et al.* CV-05-1285.

[12] having examined the Magistrate Judge's Report and Recommendation, we agree with his recommendation to grant the defendants' motion for summary judgment or motion for judgment on the pleadings;

[13] we concur with the Magistrate Judge's analysis of the issues raised in the defendants' motion and find the Magistrate Judge's review of the record to be comprehensive;

[14] specifically, we agree with the Magistrate Judge's conclusion that summary judgment be granted in favor of the defendants as they have demonstrated that both of the claims contained in Bartelli's complaint are time-barred by the applicable statute of limitations, and that the plaintiff failed to exhaust the available administrative remedies prior to initiating the present suit.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge Thomas M. Blewitt dated September 6, 2005 (Doc. 71) is **adopted**;

[2] the defendants' motion for summary judgment or judgment on the pleadings is granted as to all claims of the plaintiff's complaint;

[3] judgment is entered in favor of defendants, C/O Nagy and Donald Jones, and against the plaintiff, Keith Bartelli, on all claims; and,

[4] the Clerk of Court is directed to close this case, and forward a copy of this Memorandum and Order to the Magistrate Judge.

s/Edwin M. Kosik
United States District Judge